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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

Guardianship of V.M., a Minor.

CAROL B. et al.,

Petitioners and Respondents,

v.

TERRY D.,

Objector and Appellant.

C059553

(Super. Ct. No. FL351109)

In these consolidated Family Code/Probate Code proceedings, Carol B. and Chris B. (hereafter collectively referred to as petitioners), the maternal uncle and aunt of the female minor, V.M., seek to adopt her in the event the court declares her free from the custody and control of Terry D. (hereafter referred to as objector), the minor's biological father, and terminates his parental rights. (Fam. Code, § 7800 et seq.; Prob. Code, § 1510 et seq.) So far as the record shows, that hearing has not yet occurred.

Objector appeals in propria persona from the interim order appointing petitioners as V.M.'s permanent guardians. He contends the order violated due process because it issued without prior notice to him and his trial counsel. Petitioners have not filed a brief.

We affirm. As we shall explain, objector is not the presumed father of V.M. He is only the natural father. Under the controlling statutes, a natural father is entitled to notice only of the proposed termination of parental rights itself, not of interim orders preceding that event. Objector has received due notice of the proceedings to terminate his parental rights. Therefore, his claim of due process error fails.

FACTUAL AND PROCEDURAL BACKGROUND

On August 17, 2004, when V.M. was four years old, petitioners were appointed her legal guardians in Arkansas, where all known parties then resided. The Arkansas probate court found that V.M. lived with petitioners and V.M.'s mother consented to the guardianship.

On June 27, 2007, after relocating to California, petitioners filed a petition in San Joaquin County Superior Court to declare V.M. free from parental custody and control. They declared that they had legal custody of V.M. and wished to adopt her, that her mother was aware of V.M.'s whereabouts but had had minimal contact with her and had made no provisions for her support, and that her father was unknown. They duly served the petition on V.M.'s mother.

On August 6, 2007, the superior court directed petitioners to file a petition for guardianship.

On August 7, 2007, petitioners filed a petition for appointment of guardian of the person and a petition for appointment of temporary guardian of the person, again declaring that V.M.'s father was unknown. The superior court appointed petitioners as V.M.'s temporary guardians and ordered the guardianship petition consolidated with their petition to adopt.

On August 22, 2007, having learned objector's identity and last known address (in Kansas), petitioners issued notice to him to appear and show cause why V.M. should not be declared free from his parental control. However, on September 6, 2007, a process server declared that objector could not be served because he no longer lived at the Kansas address and the person contacted there did not have any other address for him; she thought he might have moved "back to Mexico."

On September 10, 2007, the superior court continued the hearing on the petition for freedom from parental custody and control to December 10, 2007.

On October 10, 2007, the San Joaquin County Human Services Agency filed an evaluation and report recommending that V.M. be freed from parental custody and control and adopted by petitioners. (Fam. Code, § 7850.) The report stated that objector "was identified and came to court" through an undescribed "court process in Missouri," but had since moved to Mexico and had failed to keep in touch with V.M.

On October 15, 2007, the superior court ordered the extension of petitioners' letters of temporary guardianship to December 10, 2007.

On December 10, 2007, the superior court terminated the parental rights of V.M.'s mother and again extended petitioners' letters of temporary guardianship, to January 31, 2008. The court also ordered that notice to objector of the December 10 hearing be dispensed with.

On December 11, 2007, petitioners filed a petition to dispense with notice to objector and to terminate his parental rights, alleging that his whereabouts were unknown, he had had virtually no contact with V.M., and he was believed to have outstanding warrants for his arrest. (Cf. Fam. Code, § 7666, subd. (b).)

On December 31, 2007, however, the State Department of Social Services (the Department) reported that it might have located objector. (Fam. Code, § 7663.) Having learned that a person bearing the alleged father's name had been "caught in Mexico" and was now jailed in Johnson County, Kansas, the Department was attempting to verify his identity and (assuming he was the natural father) to find out his position in this litigation. The Department had notified petitioners' counsel of objector's apparent whereabouts and had asked counsel to try to serve him with notice of the proceedings. Because he had not yet signed a consent, waiver, or denial of paternity, the court would have to adjudicate his parental rights pursuant to Family Code section 7600 et seq.

On January 7, 2008, the superior court entered judgment freeing V.M. from her mother's custody and control. (Fam. Code, §§ 7893-7894.)

On January 8, 2008, petitioners filed an amended petition to declare V.M. free from objector's parental custody and control. On January 29, 2008, the court issued a second amended citation to appear, giving March 3, 2008, as the hearing date. Objector was personally served with the amended citation on February 8, 2008.

On March 3, 2008, after objector failed to appear at the hearing, the superior court entered an order terminating his parental rights and a judgment freeing V.M. from his custody and control. However, on March 5, 2008, after receiving a letter from objector, the court vacated its order and judgment and reset the hearing on the termination of objector's parental rights to March 24, 2008.

On March 24, 2008, the superior court appointed the public defender to represent objector, although he was still in jail in Kansas, and continued the matter to April 24, 2008, for trial setting. It subsequently continued the matter again to June 23, 2008, and extended petitioners' letters of temporary guardianship to that date.

On June 20, 2008, objector's counsel moved for an order to transport objector from the custody of the Johnson County (Kansas) Adult Detention Center to the San Joaquin County Superior Court in California for trial. Counsel also requested

a continuance until objector could be transported or was released from custody (expected to occur in Dec. 2009).

On June 23, 2008, the superior court held a hearing at which counsel and petitioners appeared, but objector did not. Pursuant to counsels' agreement, the court continued the termination of parental rights hearing to February 1, 2010.

After that, the court said: "And then the other thing that we're going to put on the record is that at the present time there's been a temporary guardianship and, Ms. Guili[ani] [petitioners' counsel], it is a request to make that a permanent guardianship?"

Objector's counsel objected: ". . . I did not know that today's proceeding included a request for a permanent guardianship. I know that my client would like to be here on such an important matter. However, he is detained by the authorities in Kansas and cannot come here on his own. [¶] So I don't believe he has notice. And I know that he's not able to come here on his own. I would request the . . . decision on the parental guardianship be continued until a time when the Court can order him present or have him transported."

Petitioners' counsel stated that objector's counsel had said objector "had no problem with the adoption [of V.M.]." Objector's counsel replied that the proposed order of permanent guardianship involved a "different set of legal rights and responsibilities that are being taken from [objector], which I haven't discussed with him, excuse me. And I certainly think it

is appropriate that they be discussed with him and that he [should have] had notice of this [proposed order]."

Petitioners' counsel asserted that there had been a guardianship in place in Arkansas since 2004, which was dismissed in Arkansas only to give the court here jurisdiction to hear the matter, and petitioners had received extensions of their temporary guardianship on request; thus, the guardianship matter "has always been trailing this proceeding. [I]t has not been a secret." Objector's counsel said he did not know whether objector had "specific notice of that" and counsel had not given him any such notice.

After petitioners' counsel said V.M. had been in petitioners' care since she was two years old and was now eight, the court found a permanent guardianship was in her best interest "in light of the fact that we're continuing this[] so long in order to grant [objector] his right to be here at the termination of parental rights hearing." The court denied objector's counsel's request to be appointed in the guardianship proceeding, reasoning: (1) parents are not entitled to appointed counsel in such proceedings, and (2) counsel could be heard on guardianship matters under his existing appointment.

The court also found that due to counsel's presence at this hearing, objector had notice of the February 1, 2010, hearing on termination of parental rights.

Following the hearing, the superior court issued letters of permanent guardianship to petitioners.

On July 8, 2008, objector, in propria persona, filed a document styled "notice of appeal - felony (defe[n]dant)," stating that the appeal was taken from the order granting permanent guardianship "without notice to me, without being afforded a[n] attorney and without being able to be present because I am in government custody." (Capitalization omitted.) On July 17, 2008, objector's counsel filed a more conventional notice of appeal from the order granting permanent guardianship. This court deemed both notices of appeal operative.

DISCUSSION

Objector, appearing in propria persona, contends the superior court's order of permanent guardianship violated due process because it was made without notice to him or his counsel. We conclude objector has not shown either that due process required such notice or that the lack of notice prejudiced him.

An appellant who appears in propria persona is entitled to no special consideration, but will be held to the same standards as an attorney. (*Doran v. Dreyer* (1956) 143 Cal.App.2d 289, 290.) Therefore, we cannot overlook defects in objector's briefing merely because he is in propria persona, or make arguments on his behalf that he has failed to make for himself.

Under the Uniform Parentage Act (hereafter UPA; Fam. Code, § 7600 et seq.), biological fathers are either "presumed fathers" or "natural fathers." (Fam. Code, § 7611; *Adoption of Michael H.* (1995) 10 Cal.4th 1043, 1051 (*Michael H.*); *Adoption*

of *Kelsey S.* (1992) 1 Cal.4th 816.) As we explain, objector is a natural father.

"An unwed father's rights . . . under the UPA substantially depend on whether he is a 'presumed father' within the meaning of [Family Code] section 7611. [Citations.] Under [Family Code] section 7611, a man who has neither legally married nor attempted to legally marry the mother of his child cannot become a presumed father unless he *both* 'receives the child into his home *and* openly holds out the child as his natural child.' ([Fam. Code,] § 7611, subd. (d), *italics added.*)" (*Michael H., supra*, 10 Cal.4th at pp. 1050-1051.) To "'receive[] the child into his home'" means to bring the child physically into the home. (*Id.* at p. 1051.)

The record does not show that objector ever legally married or attempted to marry V.M.'s mother, or that he ever received V.M. into his home. Thus, the fact that he now openly holds her out as his natural child makes him only a natural father, not a presumed father. Unlike a presumed father -- i.e., a person who has done everything legally possible to act as a father -- a natural father cannot block adoption merely by withholding his consent. Therefore, his rights to notice and participation in adoption proceedings are distinctly limited.

"If a man is a presumed father, a third party generally cannot adopt his child [without his] consent. ([Fam. Code,] §§ 8604-8606.) If a man is not a presumed father, however, . . . [his] consent is not required unless he successfully petitions to block the adoption and establish his legal status

as the child's father. ([Fam. Code,] §§ 7630, 7662.) Even if he files such a petition, the adoption will proceed over his objection if . . . the party seeking to adopt the child successfully petitions for termination of his parental status. ([Fam. Code,] § 7662.)" (*Michael H., supra*, 10 Cal.4th at p. 1051.)

Guardianship petitions can be heard in an adoption proceeding under Family Code section 7800 et seq. (Prob. Code, §§ 1510, subd. (h), 1516.5, subd. (a).) These Family Code provisions determine a parent's rights to notice and counsel in a consolidated adoption/guardianship proceeding. (Prob. Code, § 1516.5, subd. (c).)

Family Code section 7800 et seq. do not provide that a natural father is entitled to notice of interim orders within a proceeding to terminate his parental rights. They provide only that, in proceedings to free a child from parental custody and control (which, as here, may include proceedings to terminate parental rights), "[n]otice of the proceeding" shall be served on a parent, either personally or by publication. (Fam. Code, §§ 7881-7882, *italics added*.)¹ In other words, a natural father must receive notice of the overall proceedings, as has

¹ Because sections 7881 and 7882 form part of chapter 3 ("Procedure," commencing at § 7840) of part 4 of the Family Code ("Freedom From Parental Custody and Control," commencing at § 7800), the "proceeding" referred to here necessarily means the proceeding to free the minor from parental custody and control, including if necessary a proceeding to terminate parental rights. These provisions do not mention any other "proceeding."

objector. But this statutory language does not mandate notice of interim orders prior to the ultimate determination whether the child should be freed from parental custody and control and the parent's rights terminated.

Furthermore, objector has not cited any authority holding that a natural father is entitled to notice of interim orders in a consolidated adoption/guardianship proceeding. The case law he cites is inapposite because it pertains only to juvenile dependency proceedings under Welfare and Institutions Code section 300 et seq. This case does not involve such a proceeding.

This court has held, construing the former provisions of the Civil Code which generally correspond to the current Family Code, that a natural father was entitled to "notice of the adoption proceedings and the right to be heard on those limited matters affecting his contingent interests." (*Adoption of Rebecca B.* (1977) 68 Cal.App.3d 193, 200.) But, assuming that that holding applies to the Family Code, we cannot discern in objector's brief any attempt to show how an order changing petitioners' status from temporary to permanent guardians of V.M. could "affect[] his contingent interests." (*Adoption of Rebecca B., supra*, at p. 200.) Thus, *Rebecca B.* does not assist objector.

We do not consider legal propositions unsupported by authority. (*Amato v. Mercury Casualty Co.* (1993) 18 Cal.App.4th 1784, 1794.) Therefore, objector's claim that he was entitled

to prior notice of the proposed order making petitioners V.M.'s permanent guardians fails for want of support.

But, even assuming for the sake of argument that objector was entitled to prior notice of the proposed order, he has not shown how its issuance without notice prejudiced him. To obtain reversal, an appellant must show not only error but prejudice. (Cal. Const, art. VI, § 13.) Objector has not explained how the order has weakened his position on the question whether his parental rights should be terminated, and we do not see how it could have done so.

DISPOSITION

The order appointing petitioners as V.M.'s permanent guardians is affirmed.

NICHOLSON, J.

We concur:

SCOTLAND, P. J.

ROBIE, J.